IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

BAHMAN PAYMAN, M.D.,	)	
Plaintiff	)	
	)	
v.	)	Civil Action No. 2:04cv00089
	)	**MEMORANDUM OPINION**
WELLMONT HEALTH SYSTEM,)		
d/b/a WELLMONT LONESOME	)	
PINE HOSP.,	)	By: GLEN M. WILLIAMS
Defendant	)	Senior United States District Judge

This matter is before the court on a Motion for Removal/Change of Venue by Plaintiff Bahman Payman, ("Payman"), (Docket Item No. 9), Motion to Dismiss by Defendant Wellmont Health System, ("Wellmont"), (Docket Item No. 12), Motion for Sanctions by Wellmont, (Docket Item No. 13), Motion for Summary Judgment by Wellmont, (Docket Item No. 15), and various motions by Payman in response to Wellmont's filings. The court heard oral arguments in a hearing in chambers on December 16, 2004. Accordingly, the court denies Payman's Motion for Removal/Change of Venue. The court also grants Wellmont's Motion for Summary Judgment, thereby dismissing Payman's Motion for Judgment with prejudice and granting Wellmont's Counterclaim for a permanent injunction requiring Payman to seek leave of this court before he files any more lawsuits against Wellmont or anyone in privity with Wellmont. Finally, the court grants Wellmont's Motion for Sanctions and awards sanctions, and denies Wellmont's Motion to Dismiss as moot.

I. Background

Many of the facts giving rise to this case were set out in *Payman v. Bishop*, No. 2:03cv00048, 2003 WL 2002774 (W.D.Va. 2003) (Jones, J.) (unpublished). Since Rule 11 sanctions are involved in this case, the court will relay the facts from *Payman v. Bishop* and supplement them with the events that have occurred since the court's decision in that case.

> The plaintiff, a physician, was refused staff privileges in 2000 by Lonesome Pine Hospital, a private hospital located in Big Stone Gap, Virginia, and part of the Wellmont Health System. Represented by counsel, he filed suit against Wellmont in the Circuit Court of Wise County, Virginia, claiming that the failure to grant him staff privileges was 'discriminatory, illegal, improper, irrational, arbitrary, capricious and unlawful.' The action was removed to this court on the basis of diversity of citizenship, the plaintiff being a resident of Virginia and Wellmont being a Tennessee corporation. Thereafter the court dismissed the action for failure to state a claim. (citations omitted.) No appeal was taken from that judgment.
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> Payman then filed a pro se action in the Circuit Court of Wise County [in 2002] over the denial of privileges, but named as defendants not Wellmont Health System, but four individuals associated with Lonesome Pine Hospital, all residents of Virginia. He claimed that these defendants had been 'negligent' in the handling of his application and 'made misrepresentation [sic] concerning his application which they knew or by reasonable inquiry should have known were improper allegations.' On April 17, 2002, Payman took a voluntary nonsuit and his case was dismissed without prejudice by the state court.

Payman v. Bishop, No. 2:03cv00048, 2003 WL 2002774 (W.D.Va. 2003) (Jones, J.) (unpublished).

On October 15, 2002, Payman refiled the case in the same state court, again pro se. This lawsuit was against the same defendants and contained similar allegations to the second case. These allegations were that Payman was a native of Iran, that based on his national origin the defendants denied him staff privileges at the hospital, and that the defendants engaged in a conspiracy to injure Payman in the carrying on of his profession. Payman sought compensatory damages in the amount of $500,000.00, the same as in the previous two suits. The defendants removed the case to federal court claiming federal question jurisdiction, but the case was remanded back to state court. *Payman v. Bishop*, No. 2:03cv00048, 2003 WL 2002774 (W.D.Va. 2003) (Jones, J.) (unpublished). The Circuit Court for Wise County issued a final order on October 31, 2003, dismissing Payman's action with prejudice as being barred by res judicata because the issues were litigated in the 2000 lawsuit removed to federal court. Payman petitioned the Supreme Court of Virginia to appeal the decision, but his petition was denied on May 4, 2004.

On June 6, 2004, Payman petitioned this court to vacate the judgment in the original 2000 case, contending that the Supreme Court extended the statute of limitations for cases involving claims of national origin discrimination from two to four years. On June 22, 2004, this court denied the petition because it no longer had jurisdiction over the claim.

Payman then filed the suit at bar on June 6, 2004, in the Circuit Court of Lee County, again pro se. It also alleged national origin discrimination and sought $500,000.00 in compensatory damages as well as $400,000.00 in punitive damages.

The case was removed to this court on October 12, 2004. Payman filed a motion objecting to this court's jurisdiction on October 27, 2004.

In his Motion for Judgment and later filings with the court, Payman alleged that Wellmont "stopped processing [Payman's] application for privileges [based on] [n]ational origin discrimination." (Plaintiff's Motion for Judgment at 1.) Plaintiff further alleged that Wellmont was "notorious" for national origin discrimination. (Plaintiff's Motion for Judgment at 1; Plaintiff's Motion in Opposition to Dismiss and Sanctions, ("Plaintiff's Motion in Opposition"), at 1; Plaintiff's Motion Regarding Relevant Evidence Contradicting Defendant's Evidence at 2.) Payman alleged "bad faith and malicious intent" on the part of Wellmont when it stopped processing Payman's application for privileges.[1] (Plaintiff's Motion Regarding Relevant Evidence Contradicting Defendant's Evidence at 2.)

In this case, Payman cites three pieces of evidence to support his allegations: (1) the granting of hospital privileges to an American physician; (2) an alleged statement by Paul Bishop, Chief Executive Officer of Wellmont, that, "since [Wellmont] did not have any Iranian physician before in this hospital, we will be searching everything on you;" and (3) Bishop's secretary asking Payman to leave her

[1]Payman also filed a separate lawsuit alleging religious discrimination against him by Lee County Community Hospital, where he once had practicing privileges. (Plaintiff's Motion Regarding Relevant Evidence Contradicting Defendant's Evidence at 2.) Payman previously sued doctors involved with the alleged religious discrimination, and the court dismissed his claim as baseless and sanctioned him $5,000.00 for his "egregious" conduct in suing over these allegations. *Payman v. Mirza*, No. 2:02cv00023, 2003 WL 751010 (W.D.Va. 2003) (Jones, J.) (unpublished).

office. (Plaintiff's Motion for Judgment at 1; Plaintiff's Motion in Opposition at 1; Plaintiff's Motion Regarding Relevant Evidence Contradicting Defendant's Evidence at 2).

In response, Wellmont filed a Counterclaim, a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a Motion for Sanctions pursuant to Federal Rule of Civil Procedure 11 and a Motion for Summary Judgment. Oral argument on these motions was held on December 16, 2004. Since these pending motions are ripe, the court will now address each in turn.

II. Payman's Motion for Removal/Change of Venue

Payman moved this court to remand this case to the Circuit Court of Lee County or order a change of venue to the Eastern District of Tennessee on October 27, 2004. In response to this motion, Chief United States District Judge James P. Jones ordered the case reassigned to this judge on October 28, 2004. The court will treat this as a motion objecting to the jurisdiction of the court since the motion states, "[p]laintiff wants to object to the court's exercise of jurisdiction."

United States district courts have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000.00 and the action is between citizens of different states. 28 U.S.C.A. § 1332(a) (West 2003). A corporation is a citizen of the state "by which it has been incorporated and of the State

where it has its principal place of business." 28 U.S.C.A. § 1332(c)(1) (West 2003). In this case, Payman is a citizen of Virginia, and Wellmont is a Tennessee corporation. The matter in controversy exceeds $75,000.00 since Payman is asking for $500,000.00 in compensatory damages. Thus, the requirements for diversity jurisdiction as set forth in 28 U.S.C. § 1332(a) have been met. Therefore, the court will deny Payman's motion to remand this case to state court. The fact that the court handled the case in the past is not relevant for the determination of jurisdiction.

III. Wellmont's Motion for Summary Judgment and Counterclaim

Wellmont filed a Motion for Summary Judgment as to Payman's Motion for Judgment and Wellmont's Counterclaim. In its Motion for Summary Judgment, filed on November 10, 2004, Wellmont asked the court to dismiss the action with prejudice as being barred by the doctrine of res judicata and asked the court for a permanent injunction preventing Payman from initiating any type of legal process in any tribunal anywhere against Wellmont or its employees.

A. Summary Judgment Standard of Review

The standard of review for a motion for summary judgment is well-settled. The court should grant summary judgment only when the pleadings, responses to discovery and record reveal that "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); *see, e.g., Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 (1986); *Matsushita Elec. Indus. Co. v. Zenith*

Radio Corp., 475 U.S. 574, 586-87 (1986); *Miller v. Leathers*, 913 F.2d 1085, 1087 (4th Cir. 1990) (en banc); *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985). A genuine issue of fact exists "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 248.

In considering a motion for summary judgment, the court must view the facts and the reasonable inferences to be drawn from those facts in the light most favorable to the party opposing the motion. *See Anderson*, 477 U.S. at 255; *Matsushita*, 475 U.S. at 587-88; *Nguyen v. CNA Corp.*, 44 F.3d 234, 237 (4th Cir. 1995); *Miltier v. Beorn*, 896 F.2d 848, 850 (4th Cir. 1990); *Cole v. Cole*, 633 F.2d 1083, 1092 (4th Cir. 1980). In other words, the nonmoving party is entitled to have "the credibility of his evidence as forecast assumed." *Miller v. Leathers*, 913 F.2d 1085, 1087 (4th Cir. 1990) (quoting *Charbonnages de France v. Smith*, 597 F.2d 406, 414 (4th Cir. 1979)). Consequently, when reviewing Wellmont's motion, this court must view the facts and inferences to be drawn from these facts in the light most favorable to Payman.

B. Res Judicata

Wellmont argues that Payman has filed three previous lawsuits against Wellmont or its employees all based upon the same conduct alleged in this case and, thus, Payman's claim should be dismissed as barred by the doctrine of res judicata. (Defendant's Motion for Summary Judgment at 2-3.) Payman, in his Motion in Opposition, argues that he is presenting a new claim to the court because the 2001 final

order dismissed his suit for failure to state a claim based upon an antitrust claim, not the original discrimination claim. (Plaintiff's Motion in Opposition at 1.)

Res judicata is a two-pronged judicial doctrine which governs how one judicial decision may be binding on a later lawsuit based upon either the same claim or arising from the same transaction. It strives to prevent the parties to one lawsuit from litigating a second lawsuit based on the same claim. BLACK'S LAW DICTIONARY 1336-37 (8th ed. 2004). The first prong of res judicata is often called "claim preclusion."[2] 18 Wright, Miller & Cooper, FEDERAL PRACTICE & PROCEDURE: JURISDICTION 2d § 4402, at 11-12 (2002). Res judicata also seeks to preclude any other claim arising from the same transaction or series of transactions and that could have been — but was not — raised in the first suit. BLACK'S LAW DICTIONARY 1337 (8th ed. 2004). This second prong of res judicata is often called "issue preclusion."[3] 18 Wright, Miller & Cooper, FEDERAL PRACTICE & PROCEDURE: JURISDICTION 2d § 4402, at 11-12 (2002).

The purpose of res judicata is to prevent the erosion of respect from the acceptability of judicial dispute resolution that would follow if the same matter were allowed to be litigated more than once to inconsistent results. 18 Wright, Miller &

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[2]"Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984).

[3]"Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided." *Migra*, 465 U.S. at 77 n.1 (1984).

Cooper, FEDERAL PRACTICE & PROCEDURE: JURISDICTION 2d § 4403, at 23 (2002). "Res judicata precludes the assertion of a claim after a judgment on the merits in a prior suit by parties or their privies based on the same cause of action." *Meekins v. United Transp. Union*, 946 F.2d 1054, 1057 (4th Cir. 1991). Thus, res judicata protects a victorious party from being sued over and over again by the same opponent based on the same claim. 18 Wright, Miller & Cooper, FEDERAL PRACTICE & PROCEDURE: JURISDICTION 2d § 4403, at 26 (2002).

The doctrine of res judicata may be applied if there is: (1) a final judgment on the merits in the prior action; (2) an identity of the cause of action in both proceedings; and (3) an identity of the parties or their privies. *Meekins*, 946 F.2d at 1057-58.

In this case, there unquestionably was a final judgment on the merits in the previous action. Payman's 2000 suit was dismissed by this court for failure to state a claim upon which relief could be granted pursuant to Rule 12(b)(6). The claim in the case at bar makes the same allegations arising from the same transactions and occurrences that gave rise to the 2000 suit. Furthermore, the dismissal of a case under Rule 12(b)(6) is a final judgment that is accorded res judicata effect. *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462, 1471 (4th Cir. 1991). Thus, there was a final judgment on the merits in a previous action.

Further, the parties are the same in this action as they were in the previous actions. In the original case filed by Payman in 2000, he sued Wellmont. He is also suing Wellmont in this case. Thus, the requirement for an identity of the parties or

their privies has been met. *See Fayetteville Investors*, 936 F.2d at 1471.

The final requirement for res judicata to apply is that there is an identity of the cause of action in both proceedings. *Fayetteville Investors*, 936 F.2d at 1471. A cause of action is substantially the same as a previous cause of action when it implicates the same set of material facts and seeks the same relief. *Adkins v. Allstate Ins. Co.*, 728 F.2d 974, 976 (4th Cir. 1984). In the original 2000 case Payman sought $500,000.00 for discrimination. *Payman v. Wellmont Health Sys.*, No. 2:00cv00197 (Dec. 17, 2001) (Williams, J.) (unpublished). In the case at bar, Payman seeks $500,000.00 in compensatory damages and $450,000.00 in punitive damages for alleged discriminatory conduct arising out of the same facts as alleged in the 2000 case. (Plaintiff's Motion for Judgment at 1.) The only difference between the relief sought in the two cases is that Payman is now also seeking punitive damages. The case at bar is based on the same transaction and the same claims as raised by Payman in the 2000 case because Payman alleged discrimination in both cases based on the events surrounding his denial of hospital privileges. Thus, the cause of action in 2000 was substantially the same as the cause of action in front of the court today. *See Adkins v. Allstate Ins. Co.*, 728 F.2d 974, 976 (4th Cir. 1984).

Payman, however, argues that the final order entered in the 2000 case did not apply to his claim for discrimination since the final order held that he failed to state a claim based upon a antitrust theory rather than a claim for discrimination. Thus, Payman argues that the 2000 case and the case at bar are separate claims that do not share a common identity. However, like the case at bar, Payman's initial claim in the

2000 case was for discrimination. After being given leave to amend his complaint so that it would sufficiently state a discrimination claim, Payman chose to forgo his discrimination claim and instead to allege a claim for antitrust. Payman's choosing to advance a theory of antitrust in his amended complaint as opposed to his original theory of discrimination, however, does not affect the identity of the original cause of action for res judicata purposes. Res judicata forecloses the litigation of any claims that could have been raised in the original lawsuit, whether or not they were actually raised. In the 2000 case Payman alleged but failed to state a claim for discrimination, and his case was dismissed. He is again suing for discrimination in the case at bar, and, since the identity of the two causes of action are substantially the same, Payman's argument is without merit. Therefore, since the three requirements for res judicata have been met, *see Meekin*, 946 F.2d at 1057-58, Wellmont's Motion for Summary Judgment will be granted, and Payman's Motion for Judgment will be dismissed with prejudice as barred by the doctrine of res judicata.

C. Permanent Injunction

As stated above, Wellmont also is seeking a permanent injunction preventing Payman from initiating any type of legal process in any tribunal anywhere against Wellmont or its employees. The All Writs Act, 28 U.S.C. § 1651(a), grants federal courts the power to "limit access to the courts by vexatious and repetitive litigants . . . ." Even so, federal injunctive relief is an "extreme remedy" that should not be routinely granted. *Simmons v. Poe*, 47 F.3d 1370, 1382 (4th Cir. 1995). Injunctive relief is not appropriate unless there is a real and immediate threat of future injury in

addition to objectionable past conduct. *Rizzo v. Goode*, 423 U.S. 362, 372 (1976). If an injunction is granted, the order granting the injunction "shall set forth the reasons for its issuance[,] . . . be specific in its terms[,] . . . and describe in reasonable detail . . . the act or acts sought to be restrained . . . ." FED. R. CIV. P. 65(d).

If state court proceedings are the target of an injunction, the injunctive relief must not be granted unless it falls within one of the three exceptions listed in the Anti-Injunction Act. 28 U.S.C.A. § 2283 (West 2003). These three exceptions are: (1) when injunctions are expressly authorized by statute; (2) when injunctions are necessary to aid the court's jurisdictions; and (3) when injunctions are necessary to prevent relitigation of an issue previously presented to and finally decided by the court. 28 U.S.C.A. § 2283 (West 2003). The statute "absolutely prohibits enjoining state court proceedings unless the injunction would fall within one of its three specifically defined exceptions." *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286 (1970). Also, the three exceptions to the rule against injunctions should be narrowly interpreted. *Bluefield Community Hosp., Inc. v. Anziulewicz*, 737 F.2d 405, 408 (4th Cir. 1984).

The third exception to the Anti-Injunction Act is where an injunction is necessary to "protect or effectuate [the court's] judgments." 28 U.S.C.A. § 2283 (West 2003). This exception "was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court[s]. It is founded in the well-recognized concepts of res judicata and collateral estoppel." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988). This

exception must be narrowly interpreted. *Chick Kam Choo*, 486 U.S. at 148. Further, "an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court." *Chick Kam Choo*, 486 U.S. at 148.

The Anti-Injunction Act does not bar the court from issuing an injunction in this case. As discussed above, the claim at issue in this case is the same claim that has been consistently litigated in state and federal courts since 2000. Even though the exceptions to the Anti-Injunction Act should be narrowly interpreted, the claim that Payman has raised in this case was initially raised in this court several years ago, and a final order was issued by the court dismissing the claim in December 2001. Payman then refiled the same claim in state court, and the state court dismissed the case as barred by the doctrine of res judicata in October 2003. After this court refused to vacate and reopen Payman's initial 2000 case in June of 2004, Payman filed another case raising the same issues in the Circuit Court of Lee County, Virginia. The case was subsequently removed to this court based on diversity jurisdiction. Since the purpose of the injunction that Wellmont is seeking would be to protect it from further litigating issues already decided by the court, this court may issue an injunction in this case.

Because the court has the power to issue the injunction, the next step is to determine whether a prefiling injunction is substantively warranted. In deciding whether to grant the injunction, this court must weigh all the relevant circumstances, including:

> (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions.

Cromer v. Kraft Foods North America, Inc., 390 F.3d 812, 818 (4th Cir. 2004). Payman has filed claims making the same essential allegations at least four times, and has been sanctioned at least once in another case. While he may have had a good faith basis for his initial filing in 2000, it is clear that the issues have been litigated several times over and there seems no basis for this lawsuit other than to harass Wellmont. Payman has burdened this court and the Virginia state courts many times over relitigating the facts surrounding this case.

Also, alternative sanctions are unlikely to work in this case. Payman has been a "frequent litigator" in the Western District of Virginia. *Payman v. Lee County Comm. Hosp.*, 338 F.Supp.2d 679, 680 n.1 (W.D.Va. 2004) (noting that defendant Lee County Community Hospital alleged that Payman had filed "'at least' twenty-two lawsuits in state and federal courts, either pro se or represented by nine different attorneys," and listing four other cases that Payman had filed in that court). Payman previously was fined $5,000.00 for filing two lawsuits without evidentiary support. *Payman v. Mirza*, No. 2:02cv00023, 2003 WL 751010 (W.D.Va. 2003) (Jones, J.) (unpublished) (fining Payman for violations of Rule 11 due to his allegations lacking evidentiary support). Even though Payman was fined in that previous case he has still continued to litigate the current case.

Like *Payman v. Mirza*, Payman's allegations in this case lack evidentiary basis.

Payman alleged that he was discriminated against based upon "[n]ational origin discrimination." (Plaintiff's Motion for Judgment at 1.) However, Payman has not offered any tangible evidence to prove this allegation. Instead, Payman alleged two statements he contends prove discrimination by Wellmont: one by a secretary to the CEO of Wellmont asking Payman to leave her office, and another by the CEO of Wellmont stating that since Wellmont had not previously employed an Iranian physician it would be "'searching everything on [Payman].'" (Plaintiff's Motion in Opposition at 1.) Payman alleged that the secretary's actions "could not be explained . . . except [by] her hatred toward a foreign graduate [for] which [Wellmont] is notorious," and that Wellmont had a history of discrimination. (Plaintiff's Motion in Opposition at 1-2.) Payman also alleged that Wellmont granted privileges to an American physician. (Plaintiff's Motion for Judgment at 1.) Other than Wellmont's refusal to grant Payman privileges, Payman offered no further evidence of any kind of discrimination against him. However, Payman, even after being fined for filing a baseless claim in another case, still chose to pursue this litigation. Therefore, since Payman has a pattern of filing frivolous lawsuits, does not have a good faith basis for continuing to prosecute this legal action after it ended three years ago, has burdened the legal system with three other lawsuits over the same issues raised in this case, and alternative sanctions have not worked in the past, this court finds that the four requirements for a prefiling injunction have been met.

The next issue for the court to decide is the scope of the injunction. Wellmont asked the court to grant a permanent injunction against Payman which would prohibit him from filing "any future lawsuits in any court against Wellmont or its officers, directors, employees, agents, servants, and/or attorneys." (Defendant's Counterclaim

at 3.) Wellmont also sought to enjoin Payman from "acting in concert with anyone else for the purpose of getting another person, firm, or corporation to initiate any type of legal process against Wellmont and/or any of its employees." (Defendant's Motion for Summary Judgment at 3.) However, injunctions must be "narrowly tailored to fit the specific circumstances at issue." *Cromer v. Kraft Foods North America, Inc.*, 390 F.3d 812, 818 (4th Cir. 2004). Open access to the courts is one of the most fundamental characteristics of the American judicial system, and the courts do not restrict access lightly. "The injunction must not . . . effectively deny access to the courts, and the district court must give the litigant notice and the opportunity to be heard prior to granting the injunction." *Whitehead v. Viacom, et al.*, 233 F.Supp.2d 715, 726 (D.Md. 2002). Since Wellmont asked for this injunction in its summary judgment motion, and Payman had a chance to argue against it at the hearing, the notice requirement has been met. *See also Cromer v. Kraft Foods*, 390 F.3d 812, 219-21 (4th Cir. 2004) (discussing the notice requirement for prefiling injunctions).

This court will not enjoin Payman from filing any actions anywhere against Wellmont or parties in privity with Wellmont, as that would deny Payman access to the courts for potentially meritorous claims in the future. The court, however, will grant an injunction preventing Payman from filing any actions against Wellmont or anyone in privity with Wellmont, in any court, without first obtaining leave of this court.

This injunction is narrowly tailored in that it only prevents Payman from filing claims against those people or entities against whom he has repeatedly sued and lost. Further, it does not deny him access to the court system since it is not a categorical

ban on future filings. While the scope of the injunction is broad in that it prevents Payman from filing in state court as well as in other federal courts, it is the court's judgment that this broadened scope is necessary in order for the injunction to be effective. Payman has demonstrated that he is willing to file again in different courts when he loses and has even sought to "forward" this case to the Eastern District of Tennessee. (Plaintiff's Notice of Removal and Transfer of Venue, "Motion for Removal," at 1 (stating that Payman filed the current suit in the Circuit Court of Lee County because Payman lost similar lawsuits in the Circuit Court of Wise County and in the court in the past, and asking the court to either "remand" the case back to the Circuit Court of Wise County or to "forward" the case to the Eastern District of Tennessee)). For example, this case was removed by Wellmont from the Circuit Court of Lee County to this court. The court is skeptical as to whether a narrower injunction merely requiring Payman to obtain leave of this court before he filed with actions with this court or even all federal courts would be effective since Payman has filed the same claim in both state and federal courts. Thus, it is necessary for the injunction to apply to all filings by Payman against Wellmont and parties in privity with Wellmont in any court.

IV. Wellmont's Motion for Sanctions

In its Motion for Sanctions, Wellmont asks for "payment of all defendants' reasonable attorney's fees and expenses incurred as a direct result of the filing of this action and three previous actions," pursuant to Rule 11(c)(1)(A) of the Federal Rules of Civil Procedure. (Defendant's Motion for Sanctions at 1-2.) Rule 11 governs the signing of pleadings, motions and other papers, representations to the court and

sanctions for its violation. It requires that when attorneys or unrepresented parties present pleadings to the court, they certify

> that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--
>
> > (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> > (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> > (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .

FED. R. CIV. P. 11(b). In its comments to the rule, the Advisory Committee on Rules stated that Rule 11, "emphasizes the duty of candor by subjecting litigants to potential sanctions for insisting upon a position after it is no longer tenable . . . ." FED. R. CIV. P. 11 Advisory Committee Note to the 1993 Amendments. "That summary judgment is rendered against a party does not necessarily mean, for purposes of [Rule 11] certification, that it had no evidentiary support for its position." *Id.*

Wellmont argues that Payman initiated this action for improper purposes and that Payman's allegations contained in the Motion for Judgment are not warranted by existing law or by a nonfrivolous argument for the extension or modification of current law. (Defendant's Motion for Sanctions at 2.) Wellmont also argues that Payman's current lawsuit is barred by the doctrine of res judicata, and that Payman should know this considering Payman has tried to litigate the same issues four times. In response,

Payman argues that Wellmont's Motion for Sanctions was presented to the court in order to harass Payman; Payman is asserting a new cause of action since the 2001 Final Order did not address or reach issues other than Payman's antitrust claim; and that his total income from his medical practice in 2003 was $5,400.00. (Plaintiff's Motion in Opposition at 1-2.)

As stated above, Payman argues that two statements support his allegations of discrimination by Wellmont: (1) a statement by the secretary to the CEO of Wellmont asking Payman to leave her office; and (2) a statement by the CEO of Wellmont saying that since Wellmont had not previously employed an Iranian physician it would be "'searching everything on [Payman].'" (Plaintiff's Motion in Opposition at 1). Payman has alleged that the secretary's actions "could not be explained . . . except her hatred toward a foreign graduate [for] which [Wellmont] is notorious," and that Wellmont had a history of discrimination. (Plaintiff's Motion in Opposition at 1-2.) Payman also argues that the hiring of an American physician supports his allegations of national origin discrimination. Other than Wellmont's refusal to grant Payman privileges, Payman offered no further evidence of any kind of discrimination.

A. Appropriateness of Sanctions

The court finds that the continued litigation of issues decided by this court in 2001 violates Rule 11's requirement that the claim be presented for a proper purpose and that the claims are warranted by existing law. FED. R. CIV. PRO. 11(b). As stated above, this is the fourth time Payman has filed a lawsuit based on the denial of privileges at Wellmont. In all of these cases, Payman alleged discrimination on the part

of Wellmont. This court dismissed his case alleging discrimination in 2001, thereby barring all future litigation of those issues under the doctrine of res judicata.

Payman, however, has continued to sue over them. He twice filed suit in state court based on the same facts alleged in this case and in the original 2000 case. His second suit in state court was dismissed as barred by res judicata since the issues were previously litigated in the 2000 case. This dismissal provided Payman with notice that these claims are barred because they had been litigated previously. Payman, however, still filed the case at bar. Payman had notice that there was no way to validly litigate these issues since they previously were decided by this court, but he chose to disregard this and filed this lawsuit. It was not objectively reasonable for Payman to conclude his claim in this case was not barred by res judicata. Therefore, this court must conclude that the only end this lawsuit could serve was to harass Wellmont because Payman knew or should have known that the claim raised in this case was barred.

The court additionally finds that these allegations of discrimination on the part of Wellmont do not have evidentiary support. Rule 11 requires allegations and factual contentions to have evidentiary support. FED. R. CIV. PRO. 11(b). First, it is not objectively reasonable to conclude that Wellmont denied Payman's application for privileges due to his national origin based solely upon the two statements and the hiring that Payman alleges. A secretary asking him to leave her office, Payman being told that he will be thoroughly investigated because he is the first Iranian applicant for hospital privileges, and the association of an American doctor do not provide a reasonable basis for the conclusion that Payman was denied hospital privileges based on his national origin. Payman's claim of discrimination is quite simply unreasonable.

Furthermore, Payman has been sanctioned in the past for filing a frivolous lawsuit. In *Payman v. Mirza*, No. 2:02cv00023, 2003 WL 751010 (W.D.Va. 2003) (Jones, J.), Payman sued two doctors for allegedly discriminating against him with "bad faith and malicious intent" because he was not Moslem. *Mirza*, 2003 WL 751010. This court found that Payman had no objectively reasonable evidence to support his allegations because "the only supporting basis ever presented for these allegations [was Payman's] claim that Moslems have persecuted those of the Bahai'i faith in Iran." *Mirza*, 2003 WL 751010. Based on this, the court found that Payman violated Rule 11 and it sanctioned Payman by imposing a total of $5,000.00 in sanctions.

Mirza provided Payman with notice that he needed to have more than mere accusations and assertions in order to file a lawsuit. *Mirza* quotes the Rule 11 requirement that "the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . ." FED. R. CIV. PRO. 11(b)(3). Payman, thus, knew that any allegations he made in a lawsuit must have evidentiary support. Still, he filed this case, in which, like *Mirza*, he has failed to provide evidentiary support for his allegations.

As Payman was informed in *Mirza*, he "should not be afforded any special leniency because he was proceeding pro se when the initial suit papers were filed. He is an educated person who had researched the issues sufficiently to know (and cite)" law relevant to his claim. *Mirza*, 2003 WL 751010. As stated above, Payman has filed many other cases as a pro se litigant in this and other courts. Further, Payman

did not amend his complaint when he received the Motion for Sanctions from Wellmont. Thus, he did not withdraw or correct his original pleadings even though he had notice of Wellmont's Rule 11 motion seeking sanctions. Considering that Payman filed this lawsuit knowing it was barred by the doctrine of res judicata and that his allegations of discrimination by Wellmont are baseless, sanctions are appropriate in this case.

B. Scope of Sanctions

Rule 11(c)(2) provides that sanctions "imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." FED. R. CIV. P. 11(c). These sanctions may include "directives of a nonmonetary nature, an order to pay a penalty into court, or . . . all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." FED. R. CIV. P. 11(c). As Judge Jones stated in *Mirza*, 2003 WL 751010, "since Payman is not a lawyer, a nonmonetary sanction such as a reprimand, suspension from practice, or a requirement of additional continuing legal education is inappropriate. The most effective sanction in this case, taking into account the purpose of Rule 11, is reimbursement of attorneys' fees."

In considering the scope of a monetary sanction, the court must consider: "(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the Rule 11 violation. *In re Kunstler*, 914 F.2d 505, 523 (4th Cir. 1990).

In its Motion for Sanctions, Wellmont asks the court to award it attorneys' fees from this case as well as the other three cases which arose out of the same facts. (Defendant's Motion to Dismiss at 2.) An affidavit attached to Wellmont's Motion for Summary Judgment stated that Wellmont incurred a total of $35,311.51 in attorneys' fees. In its Petition for Attorney's Fees, Wellmont indicated that its expenses for this case would amount to $7,555.39. (Defendant's Petition for Attorney's Fees at 2.) This court finds these fees and expenses to be reasonable. Payman, however, argues that he earned only $5,400.00 in 2003, (Plaintiff's Motion Regarding Relevant Evidence Contradicting Defendant's Evidence at 3), and that he currently receives income only from Social Security. (Plaintiff's Additional Evidence (Part 1) at 1.)

"[T]he purpose of Rule 11 sanctions is to deter [violations of Rule 11] rather than to compensate" the other party. FED. R. CIV. P. 11 Advisory Committee Note to the 1993 Amendments, Comments to Subdivisions (b) and (c); *see also Brubaker v. City of Richmond*, 943 F.2d 1363, 1373-1374 (4th Cir. 1991) ("In calculating the sanction, a district court should bear in mind that the purposes of Rule 11 include 'compensating the victims of the rule 11 violation, as well as punishing present litigation abuse, streamlining court dockets and facilitating court management.' The amount of a monetary sanction, however, should always reflect the primary purpose of Rule 11 – deterrence of future litigation abuse." (citations omitted)). While this court is enjoining Payman from filing any more actions against Wellmont without its permission, monetary sanctions are necessary in order to deter Payman from filing frivolous lawsuits against other defendants. Payman argues that, even though he is a board certified physician in obstetrics and gynecology whose prior contract with a

hospital provided him with annual compensation of $250,000.00 plus benefits, *Payman v. Mirza*, No. 2:02cv00023, 2003 WL 751010 n.2 (W.D.Va. 2003) (Jones, J.), due to his inability to be associated with a hospital he is now essentially surviving on Social Security. Still, as related above, Payman was sanctioned $5,000.00 for violations of Rule 11 in March of 2003, and that amount was not sufficient to deter him from this Rule 11 violation, essentially the same type of violation for which Payman was previously sanctioned. Thus, this court finds that Wellmont's attorneys' fees of $7,555.39 are reasonable and that $7,555.39 represents the minimum amount to deter Payman since the $5,000.00 previously imposed by this court was insufficient to deter Payman. Furthermore, it is only an incremental increase in the fine due to Payman's limited ability to pay. Also, the court finds that while Payman asserts an inability to pay due to limited income, a $5,000.00 fine in the previous case did not deter him from a Rule 11 violation in this case. The court additionally finds that Payman has committed a flagrant violation of Rule 11. This will be the second time Payman has been sanctioned for the same type of Rule 11 violation. Also, Payman filed this case even after he had notice that the claim he was raising was barred by the doctrine of res judicata.

Another factor this court has considered is that there is evidence of malicious intent on the part of Payman in filing this lawsuit. Payman has alleged that Wellmont is "notorious" for discriminating against people on the basis of national origin, that Lee County Community Hospital discriminated against him based on religion[4] and that

[4]The unsupported allegation that Payman was discriminated against by Moslem doctors at Lee County Community Hospital was the reason Payman was sanctioned in *Payman v. Mirza*, No. 2:02cv00023, 2003 WL 751010 (W.D.Va. 2003) (Jones, J.) (unpublished).

Wellmont acted in "bad faith and [with] malicious intent." (Plaintiff's Motion Regarding Relevant Evidence Contradicting Defendant's Evidence at 1-2; Plaintiff's Motion in Opposition at 1.) Allegations of discrimination are serious accusations that should not be made lightly. Allegations like these, whether true or false, can cause professional complications of which Payman, being a doctor, must be aware. Payman, however, has chosen to pursue this litigation even though (1) the matter had been previously decided; (2) he had no substantive evidence to support his allegations; and (3) he has been sanctioned before for filing frivolous lawsuits. In light of these facts, this court finds that the appropriate sanction is to require Payman to pay Wellmont the sum of $7,555.39.

V. Wellmont's Motion to Dismiss

Wellmont also moved this court to dismiss Payman's claim as barred by Federal Rule of Civil Procedure 12(b)(6), arguing that Payman failed to state a claim upon which relief could be granted. Since the court is alternatively granting Wellmont's Motion for Summary Judgment and holding that Payman's claim is barred by the doctrine of res judicata, Wellmont's Motion to dismiss is moot and will be denied.

VI. Conclusion

For the foregoing reasons this court denies Payman's Motion for Removal/Change of Venue, grants Wellmont's Motion for Summary Judgment and Counterclaim dismissing Payman's claim with prejudice and granting a permanent

injunction requiring Payman to seek leave of this court before he files any more lawsuits against Wellmont or anyone in privity with Wellmont, grants Wellmont's Motion for Sanctions and awards sanctions, and denies Wellmont's Motion to Dismiss.

An appropriate order will be entered.

DATED: This ____ day of January, 2005.

GLEN M. WILLIAMS
Senior United States District Judge